

COMMISSIONERS APPROVAL

CHILCOTT *ag*

THOMPSON *AT*

LYONS

PLETTENBERG (Clerk & Recorder)

Date.....February 9, 2007

Members Present.....Commissioner Greg Chilcott,  
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Sally Fortino

Commissioner Chilcott attended a morning meeting with Selway Corporation in  
Stevensville.

The Board of County Commissioners met to open bids received for the purchase of a  
dump truck/snowplow presently owned by the Airport, a 1970 International dump truck  
with plow. The bids were:

1. Mark Fournier, Hamilton \$500
2. North Star Aviation, Hamilton \$1,100

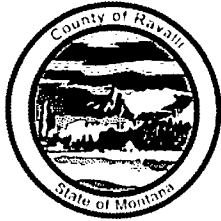
Commissioner Lyons made a motion to accept the bid for the International dump truck  
with snowplow from North Star Aviation for \$1,100. Commissioner Thompson  
seconded the motion, and all voted 'aye'.

In other business the Board of County Commissioners met with John Horat for his  
recommendations regarding the bids received for the Darby CTEP Project.  
John recommended accepting the lowest bid, which is in order, with a good summary,  
and met qualifications (Advanced Earthworks, \$107,000). He suggested they retain the  
next lowest bid in case something befalls the lowest bidding company.

Commissioner Lyons made a motion to accept the bid from Advanced Earthworks, for  
\$107,000, and retain the next lowest bid as a safety measure. Commissioner Thompson  
seconded the motion, and all voted 'aye'. Commissioner Thompson said Skip Rosenthal  
would notify all participants. John said they are hoping to start April 1<sup>st</sup>, weather  
permitting.

Minutes: Glenda Wiles

In other business the Board of County Commissioners met for discussion of a minor deviation for Kootenai Creek Village. Tristan Riddell of the Planning Department was present for this meeting as was Civil Counsel Alex Beal and County Attorney George Corn. Tristan gave a staff report as follows:



## REQUEST FOR COMMISSION ACTION

OG-07-02-147

Meeting: February 9, 2007 @ 10:00 a.m.  
Request: To approve a minor deviation for the Kootenai Creek Village (FNB, Inc.) Major Subdivision. The applicant is also requesting guidance on whether or not the Board of County Commissioners (BCC) would accept an improvements agreement.

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### I. ACTION REQUESTED

This is a request from John Horat, representing FBN, Inc., to approve a minor deviation for the **Kootenai Creek Village Major Subdivision**.

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### II. BACKGROUND

The Kootenai Creek Village Major Subdivision is a 124-lot subdivision located on approximately 42.4 acres, southwest of the Town of Stevensville. The property is accessed via US Highway 93. The BCC granted conditional approval of the subdivision proposal on March 22, 2005. The subdivision has been approved in accordance with Section 3-2-21 of the Ravalli County Subdivision Regulations (RCSR) as amended August 4, 2005, allowing the subdivision to be filed in two phases.

The applicant is now requesting a minor deviation from the preliminary plat approval of the Kootenai Creek Village Major Subdivision (Exhibit A-1). The subdivision was approved to be completed in two phases (Exhibit A-2: Reduced copy of the preliminary plat showing the approved phasing plan and proposed changes). As outlined in the deviation request, phase 1 would consist of all new lots and phase 2 would consist of the existing condominiums. The applicants request is due to a technical consideration first discovered during actual development. There are existing condominiums which are proposed to be

converted into town homes. As of this date, the applicant has not been able to get the required signatures from the existing owners.

The definition of a minor deviation in the Ravalli County Subdivision Regulations is a deviation from an approved preliminary plat that is necessary in light of technical or engineering considerations first discovered during actual development and not reasonably anticipated during the initial approval process and which does not alter the intent of the plat approval. The definition of a major deviation, which requires another public hearing, is a deviation other than a minor deviation.

The applicant has also presented the County with an improvements agreement (Exhibit A-3) for the completion of some sidewalks, road paving, and drain fields. Based on current weather conditions and an upcoming final plat approval deadline (May 31, 2007), the applicant has requested that the Commissioners give guidance on whether or not they would accept a letter of credit covering 125% of the costs to complete all improvements of the newly designed phase 1. Section 3-2-21(a) (4) of the RCSR prohibits extensions to the approval period for phased projects. The final letter of credit and improvements agreement will be submitted with the final plat for final approval from the BCC.

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#### IV. STAFF RECOMMENDATION

Staff finds that the new phasing plan does not negatively affect the approved plan and could be considered a technical consideration first discovered during actual development. The applicant may not have reasonably anticipated issues with acquiring signed documents from the condominium owners. The subdivision was approved to be completed in two phases, and with approval of the minor deviation the subdivision will still be completed in two phases. Staff recommends approval of the minor deviation.

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#### V. RECOMMENDED MOTION

That the proposed change to the phasing plan as proposed, be **approved** as a minor deviation of the **Kootenai Creek Village Major Subdivision**.

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ATTACHMENTS:	Reduced copy of the preliminary plat. Request for minor deviation and improvements agreement from John Horat, representing FBN, Inc.
STAFF:	Tristan Riddell
DATE:	February 8, 2007

John stated the phase line physically severed the project down the middle and they anticipated converting the existing condo's into town homes. The deviation is a request

to include the condos into phase 2 of the project. They would like to record the project now but finish in May.

Civil Counsel Alex Beal stated there are no real changes; the only distinction is that it shifts the time period on the existing homes, thus he considers this to be a minor deviation. Tristan stated the Planning Staff has no issues.

John stated when they change the phase time line they will not be revoking the condo association until the final phase is completed. The condo association will turn into Kootenai Creek Homeowners Association, and the townhouses will also belong to that also.

Developer Tom Allsop stated this will basically be a paperwork shuffle for ownership and membership into the association. The condo and the townhouse owners will all be part of the one association but the condo owners will have also have a separate association due to some of the buildings they own, which will deal with insurance and maintenance.

Commissioner Lyons made a motion that the proposed change to the phasing plan be approved as a minor deviation of the Kootenai Creek Village Major Subdivision. Commissioner Thompson seconded the motion and all voted "aye".

A separate issue to be discussed is still the letter of credit which has not been approved but will be submitted. Commissioner Thompson stated he would like to have the letter of credit in hand prior to any acceptance or motion. John stated there is a deadline to complete the improvements and they were hopeful to obtain a time completion on the improvements but if the Commissioners anticipate no problems with the letter of credit, they will move forward with the improvements and letter of credit.

The Board met to review and appoint applicants to the Board of Adjustments. Discussion of the applicants took place. Also present was Planning Staff Tristan Riddel as he participated with the interviews. Discussion included the order of placement from each interviewer, time constraints from the applicants, applicant backgrounds and residence locations. Commissioner Thompson made a motion to appoint Penny Howe, William Hester, Al Simmons, Will Zeiler and Phil Connelly to the Board of Adjustments with terms not to exceed 2-years based on the interim zoning initiative (maximum of two-years). Commissioner Lyons seconded the motion and all voted "aye". Commissioner Thompson also stated based on the information gathered during the interview period, he made a motion to appoint Phil Connelly as the interim Chairman of this Board of Adjustments. Commissioner Lyons seconded the motion and all voted "aye".

The Board also met to review and appoint the balance of the needed applicants needed to fill out the 15-member Open Lands Board. It was noted three representatives need to be appointed to this board as county at-large members and two representatives need to be appointed who are at-large members and who own or operate agricultural operations

greater than 50% of the operator's gross income. Discussion included the background of applicants and the only two applicants who owned agricultural operations.

Commissioner Thompson made a motion to appoint:

Dan Kraft and Dan Dunagan to board positions representing the county at large who own operations that derive 50% or greater gross income from agricultural operations.

Commissioner Lyons seconded and all voted "aye".

Commissioner Lyons made a motion to appoint: Dan Walker, Craig Siphers and Paul Wilson to the At-Large Positions. Commissioner Thompson seconded the motion and all voted "aye"

Commissioner Thompson made a motion to appoint Dan Walker as the interim Chair.

Commissioner Lyons seconded the motion and all voted "aye"

Commissioner Thompson made a motion to appoint John Ormiston as ex-officio representing the Bitterroot Land Trust. Commissioner Lyons seconded the motion and all voted "aye".

Discussion included Section 7-2-201 MCA (b) which addresses the terms of office. It was noted the Resolution does not have the terms noted, thus according to Alex Beal, to be safe the Commissioners need to amend the resolution to include the term length. This amendment needs to be placed on the agenda for public discussion. Due to this, Commissioner Thompson made a motion that seven members serve 4-year terms; 6 members serve 3 year terms; and the terms be drawn at random at the initial meeting of the Board. Commissioner Lyons seconded the motion. Discussion of the motion then occurred. Commissioner Chilcott stated he was not clear if they could appoint terms without an amended resolution. He also noted it was conceivable all three members could draw the same lot; therefore they need to be staggered terms. Karen noted it would be easier to have same length of terms with the first round having staggered terms. Commissioner Chilcott voted "nay", Commissioner Thompson voted 'nay" and Commissioner Lyons voted "aye". Motion failed.

Alex stated until the Commissioners amend the resolution to include the term length, the appointments do not really stand, however he would like to review the need to hold another public hearing or public meeting.

Due to this information, Commissioner Thompson made a motion to reconsider the motions for the appointments of all previously appointed members to the Open Lands Board until a future meeting date is set to amend the Resolution to establish the Ravalli County Open Lands Board and establish its' composition and terms. Commissioner Lyons seconded the motion and all voted "aye".

The Board met for various administrative matters which included the following:

Commissioner Thompson made a motion to grant final approval to the Southeast Division Subdivision based on the recommendation of the Planning Staff. Commissioner Lyons seconded the motion and all voted "aye".

Commissioner Lyons made a motion to grant final approval to the Sunnyside Orchards #2, B-4, and Lot 48A. Commissioner Thompson seconded the motion and all voted "aye".

Planning Director Karen Hughes and Planner Renee Van Hoven also addressed a previous decision made by the Board in regard to the Joe Smith Subdivision. Also present was Realtor Vinda Milless. This subdivision is located off of South Sunset Road. One of the requirements of final plat is the pro rata share of \$125,000 for road improvements. The Commissioners requested Mr. Smith's attorney write a more formal document in regard to the pro rata share. Mr. Smith did not utilize an attorney as of yet as he would like the Commissioners to approve this first, then he would hire an attorney. He stated he does not want to pay for an attorney if the Commissioners will not approve of his proposition for the pro rata share. Karen relayed the County Attorney's Office stated they would not support this type of proposal.

Vinda stated this subdivision has been going on for over 3-years. It has cost Mr. Smith well over \$100,000; which far exceeds his original estimates. He now does not have the money to hire an attorney. She stated they need to know what the terms will be; and he is just asking what the Commissioners are looking for so the Attorney will know what he should put together in writing. She stated it is hard to 'hit the bulls eye' without knowing what the target is. Karen stated the target is the conditions placed on the approval of the subdivision. She noted if the equivalent of the pro rata share can not be paid, and the developer wants to place liens on lots, he needs to state that as a proposed alternative. Karen noted the problem becomes 'the risk the county takes when the original condition is not met'. Vinda stated they do have a valid buy-sell on one of the lots. She asked if a lien on the lots would work; why have an attorney write something up?

Commissioner Lyons asked about the pro rata road share. Karen stated there was some question if there is legal access to this subdivision through state lands. Renee stated there are other routes leading to the subdivision but they are longer routes that are utilized. Therefore the developer asked for and received variances, as long as the payments made were equivalent to the original pro rata share. Renee stated Joe Smith told her the neighbors found out they do have access, but there is nothing in writing at this point.

Commissioner Chilcott stated his concern is if Mr. Smith ends up going bankrupt, then what happens, particularly if he sells one or two lots. He stated the county is not a lending institution and he does not want to place the citizens in jeopardy. Vinda stated a real estate lien takes precedence over any bankruptcy and the county could end up owning a lot. She stated each lot is worth \$100,000– 125,000. When he sells the one lot he has fees coming out of the proceeds. She stated they could lien \$60,000 on two of the lots.

Commissioner Lyons asked why he can not go to the bank. Vinda stated because he is on the verge of bankruptcy and they will not loan him any money. Currently the lots are part of his property because they are not created yet. If the lots were created, he could take a loan on them.

Karen stated there may be a buy sell on one of the lots, so one of the payments might be taken care of, but it is unknown when the second lot might sell.

Commissioner Thompson stated if they remove any personal desire to help the developer, and look at this request simply as business, they would not enter into this kind of agreement. He stated that type of agreement is not the county's interest. He stated he has to separate the subdivision and the gentleman, but he must separate the two out. He stated he does not like to hear that someone has financial problems, but that is not the county's problem.

Commissioner Chilcott stated they took interest in four lots on the Mountain Meadows Subdivision near Florence. Karen stated that developer qualified for a bond, but asked, the Commissioners and were approved with liens of four lots. They also had prospective offers on the lots, and had an attorney write up a detailed proposal for the costs and it secured physical payments not paying off the liens. Commissioner Chilcott stated the biggest issue on this request is the risk assessment. The Mountain Meadows Subdivision was a secure risk; this does not appear to be as secure a risk. This developer wants the taxpayer to extend the line of credit when he can not get a bank to extend the line of credit. Vinda stated the security is the land not the individual, and the lots are listed at \$85,000 so the owner can get them sold when they are worth \$125,000.

Commissioner Thompson stated he is not comfortable 'helping finance' this project. Commissioner Lyons asked if different subdivision regulations came about during Mr. Smiths' process. Vinda stated the county did and the costs went from \$14,000 to over \$100,000. Commissioner Chilcott stated the county never set any costs up front. Vinda stated that is what Terry Nelson of Applebury stated. Karen stated the county never made any written estimates of what the final costs would be. Commissioner Lyons stated he agrees with Commissioner Thompson.

Karen stated no motion needs to be made; they simply needed some feed back on how they should proceed. Vinda stated if the Commissioners feel this won't work, and then he probably will not go to an attorney to have the agreement drawn up. Commissioner Chilcott stated a letter of credit will work.

In other administrative matters, Karen Hughes brought forward an approval of Consulting Services for Public Participation with the Montana Public Policy Institute. This consulting service would assist them in the county-wide zoning process. The U of M Public Policy Research Institute presented a proposal which ended up somewhat different from what Karen envisioned. While the U of M is hoping to be flexible, their dollar proposal is higher in the first phase than in the second phase. Karen was hoping this to

be the opposite, but after some review; she feels their proposal makes sense. The question is - where does the money come from?

The Commissioners indicated they would 'find' the money. Karen stated they have consulting funds in the planning budget in the first amount in \$8,200 and they could review the second phase when it comes up. They would be short about \$7,000 this fiscal year as they want to use the balance of their consulting fund to the GIS modeling work. If they move forward on the GIS modeling work, and decide to fund this, then they will need \$6,000 from the Commissioners budget.

Karen also noted they Planning Office may find they can do more of the Phase 2 work themselves.

Commissioner Lyons stated he did not want to derail this process and suggested they enter into the first phase, knowing the Commissioners may need to find the balance of the monies for Phase 2. Commissioner Thompson stated he agrees to start the first phase. Commissioner Chilcott agreed, but also felt they need to make sure they can find the monies for the second phase. Due to the time of the day, the Commissioners agreed to make a formal decision on this at 1:30 this date.

After further discussion of the Public Participation Plan with the U of M; Commissioner Thompson made a motion to move forward with the funding of Phase 1, utilizing monies from the Commissioners budget. Commissioner Lyons seconded the motion and all voted "aye".

The Board met with Planning Staff and legal counsel for most of the afternoon in regard to litigation strategy in the Westmont versus Ravalli County case.